



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,155	02/13/2006	Jan Forster	CBZ-1370A	2833
22827	7590	08/19/2009		
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER CHAPMAN, JEANETTE E	
			ART UNIT 3633	PAPER NUMBER
			MAIL DATE 08/19/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/542,155

Applicant(s)

FORSTER, JAN

Examiner

Jeanette E. Chapman

Art Unit

3633

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-24, 29, 31 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-24, 29, 31, 33-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-24, 29, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bui(20040040256) in view of Jacobs Robert DE3607190

Claim 22.

Jacobs Robert DE 3607190 discloses a building construction for protection from radiation, said construction comprising at least one building component having a layered sandwich configuration 2,3,4 but one layer of gypsum antiradiation material is not poured and compressed between a concrete layer and an opposite layers laver of concrete or a sheet pile wall installed during construction of the building construction. Bui discloses one layer of gypsum material is poured and compressed between a concrete layer and an opposite layer of concrete. The time of pouring such as a sheet pile wall installed during construction of the building construction has not been shown critical. Applicant is not claiming a method of making and this method is not shown to be critical and relevant to the construction. In view of the above, it would have been obvious to modify Bui to include the gypsum antiradiation material of Jacobs to cover the walls and make them safe.

claim 23.

Jacobs discloses the building construction of claim 22, wherein said gypsum antiradiation material comprises water bound thereto. See abstract, line 10 claim 24.

The gypsum antiradiation material being made of natural, unfired calcium sulfate dehydrate has not shown to be critical or relevant to the function of the construction.

Netiher has applicant shown that other materials for the gypsum would not function as intended

Claims 25-28: Cancelled

claim 29.

Jacobs discloses the building construction of claim 28, wherein said gypsum antiradiation material comprises gypsum particles and once combined with Bui the same would have been poured into a space between said concrete layer and said opposite layer, the size of the gypsum particles have not been disclosed as being a particle size of about 40 mm or smaller. The same has not been shown to be critical or relevant to the construction and not having a particle size of the recited dimension has not been shown to critically effect the function of the device 30.

Cancelled

claim 31.

Jacobs and Bui does not discloses at least one additive selected from the group of gibbsite, hydragillite, aluminum hydrate, and magnesium added to said gypsum antiradiation material. Plaster is known in the art for including additives: the selection of any one or group of material has not been linked to any critical functioning of the construction

Claims 33-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buie in view of Jacobs and further in view of O'neal(2589021) and Kushida et al (4774045) claim 33-34.

Bui lacks the concrete layer of a double wall construction. Kushida et al discloses a building construction of claim 22, wherein said concrete layer comprises a double-wall structure, figure 6, wherein said double-wall structure is filled (thou not entirely) with poured concrete,6.

claim 35.

Jacobs and Bui does not discloses at least one additive selected from the group of gibbsite, hydralite, aluminum hydrate, and magnesium added to said gypsum antiradiation material. Plaster is known in the art for including additives: the selection of any one or group of material has not been linked to any critical functioning of the construction.

claim 36.

O'neal discloses said opposite layer comprises a concrete layer and Kushida et al discloses each of the said concrete layer comprising a double wall structure Bui as modified by Jacobs and by O'Neal/Kushida renders each of said concrete layers comprise a double-wall structure, said gypsum antiradiation material disposed between said double-wall structures.

claim 37.

O'neal discloses The building construction of claim 36, wherein each of said double-wall structures comprises wall segments connected

together with tie rods extending between said wall segments. claim 38.

O'neal discloses said double-wall structures comprises prefabricated concrete panels 6 and 3 and 10 connected together with lattice girders 2.

claim 39

Oneal discloses the building construction of claim 38, wherein said lattice girders are formed of metal which includes steel but are formed of a corrosion resistant steel. One of ordinary skill in the art would have appreciated that a corrosion resistant steel material is well known in the art and is used for obvious reasons. One of ordinary skill in the art would have appreciated using the recited type of steel for use in damp environments.

claim 40.

Bui discloses his panel is used for a multiplicity of building parts such as floors and foundations. Hence also considering Jacobs, it would have been obvious to further include a layer of anti-radiation material beneath said building construction that has sufficient structural integrity for supporting said building construction. And to further include the double wall structure as shown by Oneal and Kushida et al to provide further protection.

Applicant's arguments are not persuasive

Applicant argues, "Claim 22 expressly calls for "a building construction", in other words, a "constructed building." Claim 22 does not call for a component that may be subsequently used to construct a building or structure. Bui '256 modified to include an

anti-radiation gypsum material only provides a stiffened panel that is intended to be brought later to a construction site and combined with other panels."

Applicant's arguments regarding a "construction building" and the definition thereof is unclear and appears merely argumentative. Nevertheless, a plurality of panels are used to form a construction building as taught by paragraph [0002].

Applicant further argues, " modifying Bui '256 so that the gypsum core 112 includes anti-radiation material, as suggested by the DE '190 reference, does not result in a combination of elements in accordance with independent claim 22. The resulting combination merely results in a stiffened panel having a cement plate 110 attached to a stiffening system 120. This plate is not a "building construction" (i.e. constructed building), but is simply a panel intended to be brought to a construction site and assembled with other panels." The plate is a part of the building construction and many plates make up a building construction.

Applicant continues to argue, "The reference does not teach or suggest that the gypsum layer is poured and compressed between opposite layers. In fact, the plate 110 of Bui '256 cannot stand alone, but must be supported by the stiffening grid system 120." The gypsum material is shown to be inserted between the concrete layers; how this is done in claims directed to an article or product is immaterial. Again, applicant is not claiming a method. If applicant is arguing a product by process limitation than if the product can be shown the process may lack criticality or relevancy. Applicant has not shown a nexus or

strong link between the product and the process. Further and with regard to the grid of Bui, applicant is not claiming the cement and gypsum only or exclusively.

Applicant also states, "the Federal Circuit Court of Appeals has long recognized that functional language is a legitimate means of expressing meaningful limitations in an apparatus claim. For example, the Examiner's attention is drawn to K-2 Corp. v. Salomon S.A., 191 F.3d 1356 (Fed. Cir. 1999), wherein the Federal Circuit Court of Appeals recognized and held that functional language may be appropriate in an apparatus claim where such language tells one skilled in the art something about the structural requirements of the attachment between the different components....." The legitimacy and appropriateness of the claimed limitations does not translate into patentability.

Applicant continues to argue, "..... This construction technique yields a significantly different structure as compared to the modular plate 110 of Bui '256, which is intended to have a cement panel 100 that is "significantly reduced" in weight and thickness because it is bonded or attached to a stiffening girder or grid system 120, wherein the plates are then later connected together or attached to frame structure at a construction site." The language of the claims do not distinguish applicant's invention over that of the prior art; the claims recite no distinguishing limitations.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday, 8:30-6:00, every fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

Application/Control Number: 10/542,155

Page 9

Art Unit: 3633

Customer Service Representative or access to the automated information system, call
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JEANETTE CHAPMAN/
PRIMARY EXAMINER
ART UNIT 3633